

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MICHAEL MADARANG Y SANTOS, ACCUSED-APPELLANT.

G.R. No. 70569. January 07, 1987

Ponente: FERNAN, J.

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FERNAN, J.:

Michael Madarang y Santos appealed from the decision of the Regional Trial Court of Bauang, La Union, Branch 33, convicting him in Criminal Case No. 567-BG of a violation of Section 4, Article II, of Republic Act No. 6425 [Dangerous Drugs Act of 1972, as amended by Presidential Decree No. 1675] and sentencing him to life imprisonment and to pay a fine of P20,000.[1]

Madarang, together with Cirilo Juan y Polas, was charged in an information dated January 26, 1983, as follows:

"That on or about the 12th day of July, 1982 at Sitio Gabor, Barangay Bilis, Municipality of Burgos, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously and without any justifiable cause and not being authorized by law, sell Eight Hundred [800] grams of dried Marijuana leaves with flowering tops, a prohibited drug, to Pfc. Roberto C. Vilorio, a member of the Integrated National Police, a Government agent who pretended as buyer.

"Contrary to Sec. 4, Art. II of R.A. 6425 as amended by P.D. 1675."[2]

Juan, who evaded arrest, has not been tried and is still at large. [3] Only Madarang was convicted.

The lower court based its finding of guilt on the prosecution's evidence. Thus:

In the early morning of July 12, 1982, Integrated National Police Sergeants Alejandro Basallo and Roberto Vilorio of the San Fernando Police Station in La Union were tipped by a civilian informer [identity undisclosed] that certain drug pushers would be selling about four kilos of dried marijuana leaves valued at P2,800 in Barangay Bilis, Burgos, La Union. Acting on that information and with the permission of his station commander, Basallo formed a combined Integrated National Police [INP]/Naval Intelligence Bureau [NIB] team composed of himself and Vilorio and Eduardo Pascua and Douglas Abalos of the NIB of Poro Point, La Union. Adopting a strategy to entrap the drug dealers, it was agreed that Vilorio would pose as the buyer, Basallo as the driver and Abalos and Pascua as passengers.[4]

Said officers, clad in civilian clothes, and the informer proceeded to Barangay Bilis, about two kilometers away, on board a borrowed passenger jeepney. This was actually their second attempt to apprehend the suspected drug dealers. Earlier, on June 9, acting on the same information, they waited in Sitio Gabor for the drug pushers, but the intended sale failed to materialize as the latter did not appear.[5]

The combined team arrived in Sitio Gabor, in Barangay Bilis at past ten in the morning. After parking the jeepney along the Naguilian Highway, the civilian informer left while the rest waited by the jeepney.[6]

At around 2:25 in the afternoon, the civilian informer returned and informed the group that the marijuana dealers were in a house situated about two hundred meters from where they were waiting. They backed up the jeepney, stopping a few meters from the house indicated. Several minutes later, two men came down from the mountainside and approached the jeepney. They were the accused Cirilo Juan and Michael Madarang. Juan was holding a plastic bag.[7]

The civilian informer introduced the two to Sgt. Vilorio, who was then seated inside the jeepney, as the buyer. Thereupon, Madarang and Juan boarded the vehicle and sat opposite him. Vilorio asked the two the price of their marijuana. Madarang promptly replied that it was P600 a kilo and showed one stalk as sample. Vilorio inspected the rest of the marijuana leaves wrapped in manila paper inside the plastic bag. He tried to bargain for a lower price but Madarang insisted on the original price of P600. Vilorio relented and accepted the offer ["Sige ngarud"]. He took out his wallet from his back pocket, but instead of paying, he showed Juan and Madarang his police identification card and identified himself as a police officer. This caught Madarang and Juan by surprise, who could not make any move. The other members of the team, then standing at the side of the jeepney, boarded the vehicle, arrested the drug peddlers and confiscated from Juan the plastic bag containing dried marijuana leaves with flowering tops.[8]

The peace officers then proceeded to the Burgos Police station and had the apprehension of Madarang and Juan recorded in the police blotter.[9] Thereafter, they brought Madarang and Juan and the confiscated marijuana to the police station in San Fernando, La Union, where they were investigated, detained and subsequently released.[10]

Meanwhile, a microscopic test and thin layer chromatography conducted on the confiscated marijuana leaves with flowering tops [about 800 grams] at the Philippine Constabulary Crime Laboratory unit in Camp Dangwa, La Trinidad, Benguet, where they were delivered by Sgt. Basallo for examination, positively confirmed that the same were really marijuana.[11]

After a prima facie finding by the provincial fiscal that the offense complained of had been committed by the accused, Juan and Madarang were ordered re-arrested.[12] Madarang voluntarily surrendered and upon arraignment pleaded not guilty.[13] Trial ensued and eventually the judgment of conviction under review was promulgated.

During the trial, the defense adduced the following evidence:

Michael Madarang, 18 [born on March 19, 1964], single, and a vocational student taking practical electricity, testified that at noontime of July 12, 1982 [Monday] he was sleeping alone in his house located along the Naguilian Highway because he was sick with influenza.[14] At around one o'clock in the afternoon, Cirilo Juan came to his house and asked him to accompany the former to meet certain persons. Since he knew Juan since childhood and was quite close to him, Madarang agreed to accompany Juan though he felt weak. They walked in the direction of Siping, a road leading to the Naguilian Highway. Madarang noticed that Juan was holding something wrapped in cellophane. He asked Juan what the object was but the latter did not answer him directly. Juan appeared excited and in a hurry.[15]

Mararang and Juan stopped at the house of Trifon Gallardo where Juan was immediately met by Felix Biwang, who was with two men standing in the yard. Juan talked with the two strangers, after which they [Juan and the two strangers] boarded a jeepney parked about 50 meters down the road. Madarang remained where he was until Juan waved at him to join them inside the jeepney.[16]

There were other men inside. Madarang sat beside Juan who was then holding the cellophane bag. Madarang heard Vilorio requesting Juan to open the bag. Madarang peered inside but he did not know what the contents

were. After Vilorio inspected the contents, he suddenly drew his gun and identified himself and the other men as police officers. He placed them under arrest. Because of shock and fear, Madarang remained speechless and made no protest.[17]

They were then brought to the Burgos municipal building and afterwards to San Fernando where they were detained for twenty-two days. It was only during his detention that Madarang found out that he was arrested for illegal possession of marijuana. He was very angry with Juan for getting him involved. Upon his release, he went to his brother's house at Tabok, Kalinga, Apayao, to avoid Juan. He stayed there for about five months. However, upon learning that he was going to be arrested because of a case filed against him, he voluntarily surrendered to the authorities on March 4, 1983 prior to the service of a warrant of arrest upon him.[18]

In this appeal, Madarang contends that the trial court erred in discrediting the eyewitness testimony of Felix Biwang and in finding him guilty of the crime charged beyond reasonable doubt. Madarang disavows knowledge of the contents of the plastic bag and denies involvement with Juan in the sale of marijuana.

The issue is credibility.

Felix Biwang, a forty-two-year-old farmer from Barangay Bilis, Burgos, testified that in the morning of July 12, 1982, he was in the house of Trifon Gallardo, his father-in-law, having a drink with neighbor Virgilio Sabado. Two men, whom he did not know, came looking for Cirilo Juan.[19]

Juan arrived at 10 o'clock on board a Marcitas bus. He conversed with the two men for a few minutes. Biwang heard them ask Juan "where is it?" ["Ayanna ngay?"]. Then they separated and Juan left the two men in the yard.[20]

At about 1:00 p.m., Juan reappeared holding a bag. He was followed by Madarang. Juan rejoined the two men and they boarded the jeepney parked nearby while Madarang stayed near the house. After ten minutes, Madarang joined them. Although Biwang was about 100 to 120 meters away, he could see them because he was standing near the stairs, facing the jeepney. He could not, however, hear their conversation. Then he saw Juan and Madarang being handcuffed and the vehicle moving towards the municipal building.[21]

When first queried about his relationship with Madarang, Biwang stated that that was the first time he had seen Madarang. He however changed his testimony and admitted that Madarang and Juan were his neighbors in Burgos. He volunteered to testify in court because he was requested by Madarang's mother to whom he had related what transpired in the early afternoon of July 12th, two months after said incident.[22]

The lower court correctly rejected the testimony of Biwang. By and large, it was replete with incredulities and vacillations. If at all, it only served to emphasize the fact that Madarang was with Juan at the time of the incident and that they were together inside the jeepney when the sale of narcotics was effected to a poseur-buyer. Biwang might have seen what had taken place, but his account is insufficient to disprove Madarang's complicity. By his own admission, he was too far to hear what was being said by the persons inside the jeepney. His version therefore cannot prevail over that of the police officers who were actually present in the vehicle when Madarang, in conspiracy with Juan, negotiated the sale of the marijuana leaves for P600 a kilo.

Viloria, who posed as the buyer, and Basallo clearly and positively identified Madarang as the seller of the marijuana. The latter's defense that he only accompanied Juan and that he was completely unaware that the plastic bag actually contained illegal drugs cannot overcome the positive and unequivocal statements of the two peace officers that it was none other than Madarang who personally fixed the price of the marijuana leaves at P600 a kilo and who stood firm against Viloria's attempts at haggling.

We have carefully examined the records and find no sufficient reason to depart from the trial court's appraisal of the evidence of the prosecution and the defense. We are constrained to give credence to the narration of the incident by the prosecution witnesses, more so when they are law enforcers who are presumed to have regularly performed their duty in the absence of convincing proof to the contrary.[23]

There was an attempt by Madarang to discredit the police officers who arrested him. He accused them of extorting money from his mother in exchange for dropping the charge against him. He added that since his poor mother could only afford a small amount, they decided to frame him up. Thus, he claims that his inclusion as a co-conspirator was prompted by "ulterior motives". Madarang's mother, who executed an affidavit attesting to the foregoing was not however, asked, by the defense counsel to testify in court to elaborate on the matter and to be cross-examined by the prosecution.[24]

For someone as desperate as Madarang who was caught red-handed peddling illicit drugs, such an imputation of wrongdoing, so easily fabricated, can be expected. In the case of *People vs. Adriano*, 133 SCRA 132, the factual background of which is similar to the case at bar, We ruled that:

"It is a clear case of *res ipsa loquitur*. His imputation to the police of attempted extortion and maltreatment do not weaken the fact that he was caught red-handed in possession of contraband. The presumption that the police performed their duties regularly was not overthrown."

Moreover, one thing sticks out like a sore thumb throughout this case. We refer to the unusually submissive stance displayed by Madarang after the entrapment. As correctly observed by the trial court, if Madarang were indeed innocent of the crime imputed to him as he now vehemently insists, why did he not make a vigorous protest at the time he was placed under arrest inside the jeepney, or while enroute to Burgos and up to the time he was brought to the police station in San Fernando, La Union, where he was put in jail? His lame explanation that he was surprised and shocked by the sudden turn of events is wholly unsatisfactory because an unwarranted arrest would naturally elicit an indignant protest from an innocent man. Moreover, he meekly signed, after reading, a waiver, for his safekeeping for seven days without inquiring from the authorities why he was being detained. And finally when he confronted Juan with the latter's nondisclosure of the real contents of the plastic bag, he allegedly felt angry but he kept it to himself despite the grave nature of the charge against him.

All considered, we hold that Madarang committed an act in direct violation of Section 4, Article II of Republic Act No. 6425 as amended, which provides:

"Section 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. — The penalty of life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions. If the victim of the offense is a minor, or should a prohibited drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed."

That the marijuana leaves may have belonged to Juan is of no moment. Ownership and possession are not indispensable elements of the crime under consideration. The mere act of selling or even acting as broker in a sale of marijuana and other prohibited drugs consummates the crime under Section 4. When Madarang negotiated the sale without authority of Juan's marijuana leaves to Vilorio who posed as a buyer, he took a direct and active part in the crime. His guilt has been established beyond reasonable doubt.

WHEREFORE, the judgment in Criminal Case No. 567-BG is hereby affirmed.

SO ORDERED.

Feria, (Chairman), Alampay, Gutierrez, Jr., and Paras, JJ., concur.

- [1] Records, p. 191.
- [2] Records, pp. 3-6.
- [3]TSN, p. 146.
- [4] TSN, pp. 18, 125-127
- [5] TSN, pp. 14-17, 120-121.
- [6] TSN, p. 128.
- [7] TSN, pp. 20-21, 75, 128-132, 150, 169, 173-175.
- [8] Ehb. B; TSN, pp. 23-29, 60, 133, 135-142, 144-147, 150, 183-185, 191.
- [9] Ehb.D; TSN, pp. 29, 145.
- [10] TSN, pp. 151-152.
- [11] TSN, pp. 44-51.
- [12] Records, pp. 1, 11.
- [13] Records, pp. 44, 61, 186.
- [14] TSN, pp. 375-376.
- [15] TSN, pp. 346, 375-378, 382-384.
- [16] TSN, pp. 348-352, 359, 388.
- [17] TSN, pp. 367-368, 370, 392-395.
- [18] TSN, pp. 404, 408-410.
- [19] TSN, pp. 222, 230, 319.
- [20] TSN, pp. 224, 235-236, 291.
- [21] TSN, pp. 241-245, 291-298, 319.
- [22] TSN, pp. 246-247, 320-325.
- [23] Rule 131, section 5[m], Rules of Court.
- [24] Records, pp. 15-19, 21-22.

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